

Notice of Allowability

Application No.

10/776,104

Examiner

Tekchand Saidha

Applicant(s)

KOSTREWA ET AL.

Art Unit

1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 31 May 2005.
2. ☒ The allowed claim(s) is/are 1,5-11 and 25.
3. ☒ The drawings filed on 11 February 2004 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Notice of Allowability

1. Applicants' amendment filed on May 31, 2005 is acknowledged. Applicants' response and arguments were considered and found persuasive in view of Applicants' amendment to the claims, rejections under 112 first paragraph (enablement & written description) are withdrawn.
2. Claims 1, 5-11 & 25-26 are pending in this application
3. Claims **1, 5-11 & 25** are allowed, subject to the following Examiner's Amendment.
4. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Charles M. Avigliano on June 10, 2005.

Cancel claims 26 without prejudice.

Amend the specification as follows:

Amend the specification by inserting following the title of the invention and as the first sentence of the specification. : - - This application is a divisional of U.S. Application Serial No. 10/062,848, filed February 1, 2002, now U. S. Patent 6, 734, 004, which is a divisional of U.S. Application Serial No. 09/044,718, filed March 19, 1998, now U.S. Patent No. 6,391,605. - -

5. The following is an examiner's statement of reasons for allowance:

This Application provides a process of preparing *Aspergillus* phytase with improved specific activity over unmodified *Aspergillus* phytase using method steps comprising three dimensional structure of an unmodified phytase, a second phytase with improved specific activity and the alignment of the amino acid sequences of the said phytases with a third phytase of *Aspergillus niger* as a template. Various method are known for modifying proteins or enzymes using

Art Unit: 1652

3-dimensional structures and sequence homology, however, the specific method steps for preparing *Aspergillus* phytase with improved specific activity over unmodified *Aspergillus* phytase as claimed has been found to be unobvious.

No prior art reference or sequence of record, taken alone or in combination teach the claimed invention or provide motivation to one of ordinary skill in the art to use the skills available in the area of enzymology or molecular biology, to make the specific process obvious.

6. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tekchand Saidha whose telephone number is (571) 272 0940. The examiner can normally be reached on 8.30 am - 5.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapu Achutamurthy can be reached on (571) 272 0928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tekchand Saidha
Primary Examiner, Art Unit 1652
Recombinant Enzymes, 02A65 Remsen Bld.
400 Dulany Street, Alexandria, VA 22314
Telephone : (571) 272-0940

June 12, 2005